IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

EDWARD P. BOWERS, Plaintiff, v. COVENTRY HEALTH CARE OF THE CAROLINAS, INC., Defendant.	CASE NO. 3:17-CV-00023 **COVENTRY HEALTH CARE OF THE CAROLINAS' ANSWER AND AFFIRMATIVE DEFENSES TO THE AMENDED COMPLAINT**

DEFENDANT COVENTRY HEALTH CARE OF THE CAROLINAS, INC.'S ANSWER AND AFFIRMATIVE DEFENSES

Now comes Coventry Health Care of The Carolinas, Inc. ("Coventry" or "Defendant"), through undersigned counsel, and Answers Plaintiffs' Amended Complaint as follows:

1. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph. Therefore, such allegations are denied.

2. Defendant admits that Plaintiff was a member of a group employer plan with Middleswarth Bowers & Co. LLP (the "Plan"). All other allegations in Paragraph 2 of the Complaint are denied.

3. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 of the Complaint. Therefore, such allegations are denied.

4. Defendant admit Defendant is authorized to do business in North Carolina. Except as specifically admitted herein, Defendant denies all remaining allegations stated in Paragraph 4.

JURSISDICTION AND VENUE

5. Admitted.

6. Defendant admits that this Court has jurisdiction over this matter to the extent the

cause of action arises under the Employee Retirement Income Security Act of 1974 ("ERISA"); however, it denies that § 1132(a)(9) applies to the facts alleged in the Complaint. Except as specifically admitted herein, Defendant denies all remaining allegations stated in Paragraph 6.

7. Admitted.

FACTS & BACKGROUND

8. Admitted.

9. Admitted.

10. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph. Therefore, such allegations are denied.

11. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph. Therefore, such allegations are denied.

12. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph. Therefore, such allegations are denied.

13. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph. Therefore, such allegations are denied.

14. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph. Therefore, such allegations are denied.

15. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph. Therefore, such allegations are denied.

16. Denied.

17. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph. Therefore, such allegations are denied. To the extent Paragraph 17 suggests that the tests were "necessary to make a diagnosis," that is

specifically denied.

18. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph. Therefore, such allegations are denied.

19. Defendant admits that Defendant denied Plaintiff's claim for the cost of his Choline scan because, under the terms of Plaintiff's plan, preauthorization was required for such services and was not obtained. Defendant further admits it received certain claims from Mayo Clinic related to Plaintiff's treatment. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations stated in Paragraph 19 and, as such, denies the same. Defendant further denies all allegations not specifically admitted herein.

20. Defendant admits only that there are certain conditions precedent that must be met related to billing and payment for medical treatment under the Plan. Except as specifically admitted herein, Defendant denies all remaining allegations in Paragraph 20.

21. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph. Therefore, such allegations are denied.

22. Defendant admits it rightfully denied Plaintiff's claim for the Choline scan treatment that is the subject of this lawsuit. Except as specifically admitted herein, Defendant denies all remaining allegations stated in Paragraph 22.

23. Defendant admits the Mayo Clinic is out of network for the Plaintiff's plan. Defendant further admits the claims for the Choline scan and related tests were properly adjudicated under the terms of the Plaintiff's plan. Except as specifically admitted herein, Defendant denies all remaining allegations stated in Paragraph 23.

24. Denied.

25. Defendant admits the appeal procedures are in writing and speak for themselves.

Except as specifically admitted herein, Defendant denies all remaining allegations stated in Paragraph 25.

26. Defendant admits the appeal procedures are in writing and speak for themselves. Except as specifically admitted herein, Defendant denies all remaining allegations stated in Paragraph 26.

27. Defendant admits only that, on August 18, 2015, Defendant received a letter from Plaintiff's attorney, Michael T. Bowers, the contents of which speak for themselves. Except as specifically admitted herein, Defendant denies all remaining allegations as stated in Paragraph 27.

28. Denied.

29. Denied.

30. Denied.

31. Denied.

32. Denied.

FIRST CAUSE OF ACTION

32.[*sic*] Coventry adopts and re-alleges its responses to Paragraphs 7-31 of the Complaint.

33. Defendant admits that the insurance policy and its related procedures are in writing and speak for themselves. Except as specifically admitted herein, Defendant denies all remaining allegations stated in Paragraph 33.

34. Denied.

35. Denied.

36. Denied.

37. Denied.

SECOND CAUSE OF ACTION

38. Coventry adopts and re-alleges its responses to Paragraphs 7-31 of the Complaint.

39. Denied.

40. Denied.

41. Denied.

FIRST DEFENSE

Plaintiff's Complaint fails to state a claim against the Plan under 29 USC § 1132(a)(1)(B) upon which relief can be granted, and it should be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

SECOND DEFENSE

Plaintiff's Complaint fails to state a claim against the Plan under 29 USC § 1132(a)(9) upon which relief can be granted, and it should be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

THIRD DEFENSE

Plaintiff failed to pursue and exhaust his appeal remedies provided under his employer-sponsored plan. By reason of the foregoing, Plaintiff's Complaint should be dismissed.

FOURTH DEFENSE

Plaintiff's employer-sponsored plan has certain pre-approval procedures that Plaintiff and his health care providers were required to follow, and they failed to do so. By reason of the foregoing, Plaintiff's Complaint should be dismissed.

FIFTH DEFENSE

Plaintiff's claims are barred by the doctrines of waiver and/or estoppel and/or laches.

SIXTH DEFENSE

The Plan affirmatively pleads the provisions, terms, and requirements of the Plan, which are set forth therein, including all medical review criteria and requirements.

SEVENTH DEFENSE

Plaintiff fails to allege facts sufficient to warrant an award of extra-contractual or punitive damages to the extent same are claimed or an award of attorneys' fees.

EIGHTH DEFENSE

The Plan affirmatively pleads any applicable statute of limitations.

NINETH DEFENSE

The Plan did not breach any legal duty allegedly owing to Plaintiff and has, at all times, complied with the applicable standards of care.

TENTH DEFENSE

Plaintiff failed to satisfy conditions precedent for approval of the testing for which he seeks approval under the Plan.

ELEVENTH DEFENSE

Though punitive damages are not specifically claimed, to the extent Plaintiff's Complaint could be construed to assert a claim for extra contractual or punitive damages, Plaintiff's Complaint fails to state a claim upon which any relief may be granted. Further, Defendant would show that granting any claim for punitive damages would violate certain provisions of the Constitution of the United States, including, but not limited to, the following: The Fifth and Fourteenth Amendments guaranteeing due process of the law and are violated by the operation of such vague, imprecise, and impermissible laws as the ones on which the subject punitive damages claim is based; the Fourteenth Amendment guarantees this Defendant equal protection of the laws and is violated by the imposition of punitive damages in that such a sanction is discriminatory and arbitrary in penalizing this Defendant on the basis of wealth; the Fourth, Fifth and Sixth Amendments form the basis for laws governing the processing, convicting, and sentencing of criminal Defendants; thus, to the extent that Defendant is subjected to a criminal sanction through punitive damages, the burden of proof required to impose the same should be proved "beyond a reasonable doubt," and punitive damages should not be awarded without affording this Defendant the full range of criminal procedural safeguards afforded by the Constitution; and finally, the imposition of punitive damages would violate Article 1, Section X of said Constitution.

TWELFTH DEFENSE

The Plan adopts any affirmative defenses not specifically cited here and any other matter constituting an avoidance or affirmative defense as may be shown by the facts in this cause, and hereby reserves the right to amend this Answer to assert any such defense.

Dated: March 6, 2017

*/s/ David N. Allen*_______________________
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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of March, 2017, I electronically filed the foregoing Notice of Appearance with the Clerk of Court using the CM/ECF system, and I have served the following CM/ECF participants:

- Michael T. Bowers
  mtbowers@mac.com

/s/ David N. Allen
David N. Allen, Esq.

Attorney for Defendant